Sreedevi Naidu a/p T Sree Ramalu Naidu v Eelasegeran a/l T Nadarajah & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–33–01 OF 2014
ZAWAWI SALLEH, VERNON ONG AND ABDUL RAHMAN SEBLI JJCA
8 MAY 2015

Civil Procedure — Appeal — Appeal against High Court's judgment — Appellant claimed for restraining orders and interim maintenance — High Court dismissed claims — Whether application to restrain withdrawal of EPF sustainable — Whether unit trust statement referred to court had probative weight in support of appellant's contention — Whether first respondent dissipated properties — Whether court entitled to draw adverse inference on account of first respondent's failure to make full and frank disclosure — Whether divorce affect first respondent financially — Whether claim justified and reasonable

Family Law — Financial obligation — Application for interim maintenance — Appellant claimed for interim maintenance pending disposal of divorce petition — Whether court entitled to draw adverse inference on account of first respondent's failure to make full and frank disclosure — Whether divorce affect first respondent financially — Whether claim justified and reasonable

This was an appeal against the decision of the learned High Court judge in dismissing the appellant's application for orders that the first respondent be barred from withdrawing his savings from the employment provident fund ('EPF') ('prayer 3(a)'), withdrawing his unit trust ('prayer 3(c)'), selling the Semenyih house and the Capsquare Condominium unit ('prayers 4(a) and 4(b)'); and an order for the first respondent to pays interim maintenance in the sum of RM15,000 per month until the hearing of the petition for divorce ('prayer 5'). The marriage of the appellant and the first respondent was registered on 29 June 2010. The first respondent was an employee of Petronas and resided for the most part of the marriage in Uzbekistan whereas the appellant resided in her home in Taman Prima Saujana, Kajang, Selangor. They lived together for four months at the Semenyih house. Subsequently, the appellant filed petition for dissolution of marriage against the first respondent on ground of adultery. The appellant obtained interim ex parte order restraining the first respondent from withdrawing his savings in the EPF account until disposal of the inter partes application. After hearing the application, the learned judge dismissed the same, hence the appeal. The appellant submitted that the documents in support of her claim for interim

maintenance were contained in her affidavits filed in support of her application. The appellant also submitted that the first respondent withdrew his savings from his EPF account in breach of a court order dated 31 May 2013. The appellant further submitted that notwithstanding giving the notice to produce the first respondent had failed to produce the particulars of his unit trust holdings. However, the appellant conceded that the Semenyih house was purchased by the first respondent before the marriage. In reply, the first respondent submitted that the appellant's application to restrain him from withdrawing his savings from his EPF account was prohibited under s 51 of the Employment Provident Fund Act 1991 ('the EPF Act'). With regard to the unit trusts, the first respondent argued that the statement produced by the appellant related back prior to their marriage. The first respondent also contended that the Semenyih house was acquired by him and his late wife before the marriage and further, the appellant did not stay in the house most of the time and there was no evidence that the appellant had carried out any substantial improvement of the house. It was further argued by the first respondent that the relative needs and means of the parties had change after the marriage broke down in 2011. The first respondent also submitted that there was inordinate delay in the filing of the petition and no reason was given as to the delay for the filing of this application.

Held, dismissing the appeal for prayers 3(a), 3(c), 4(a) and 4(b); and allowing the appeal for prayer 5:

(1) In the light of s 51 of the EPF Act which provides that contributions and deposits are not to be assigned or attached the appellant's prayer to restrain the first respondent from withdrawing his savings from his EPF account was unsustainable (see para 13).

(2) The unit trust statement referred to the court at the hearing was a statement dated back in December 2006 as to have no probative weight in support of the appellant's contention. On perusing the appeal record, the court agreed with the learned judge that there was no evidence to show that the first respondent was about to or had taken any steps to dissipate the unit trust (see para 14).

(3) The Semenyih House was purchased before the first respondent married the petitioner wife. There was no evidence to support the assertion that the first respondent had or was about to dissipate the property (see para 15).

(4) The Capsquare Condominium unit was registered in the joint names of the parties hereto and also presently charged to CIMB Bank. As such, it was impossible for the first respondent to dissipate the property in question without the consent of the appellant (see para 16).

(5) Even though the first respondent was served with a notice to produce relating to his income and other financial information, the first respondent had refused to produce any documents including his EPF statement. The material non-disclosure indicated that the first respondent was deliberate, dishonest and lacking bona fides. Thus, the court was entitled to draw an adverse inference with regard to the first respondent's income and other financial information on account of his failure to make full and frank disclosure. The court also noted that there was no submission from the first respondent on whether the divorce had affected his position financially, as such, the court hold that there was no effect on the first respondent's financial position (see paras 32–33).

(6) There was a failure on the part of the learned judge to judicially appreciate the affidavit evidence on the appellant's needs and means. However, the court was of the view that the claim for interim maintenance of RM15,000 by the appellant was not entirely justified and reasonable. After considering the means and needs of the parties, the court decided that a monthly sum of RM8,000 was fair and reasonable as interim maintenance pending the hearing and disposal of the petition. After the hearing of the petition, the High Court will be the final arbiter of the amount of the maintenance to be awarded to the appellant, if any (see paras 22–23 & 34).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan hakim Mahkamah Tinggi kerana menolak permohonan perayu untuk perintah-perintah bahawa responden pertama dihalang daripada mengeluarkan simpanannya daripada kumpulan wang simpanan pekerja ('KWSP') ('permohonan 3(a)'), mengeluarkan unit amanahnya ('permohonan 3(c)'), menjual rumah Semenyih dan unit Kondominium Capsquare ('permohonan 4(a) dan 4(b)'); dan perintah untuk responden pertama membayar nafkah sementara berjumlah RM15,000 sebulan sehingga perbicaraan petisyen perceraian ('permohonan 5'). Perkahwinan perayu dan responden pertama telah didaftarkan pada 29 Jun 2010. Responden pertama adalah pekerja Petronas dan menetap semasa sebahagian besar perkahwinan di Uzbekistan manakala perayu menetap di rumahnya di Taman Prima Saujana, Kajang, Selangor. Mereka tinggal bersama selama empat bulan di rumah Semenyih itu. Berikutan itu, perayu telah memfailkan petisyen untuk pembubaran perkahwinan terhadap responden pertama atas alasan melakukan hubungan sulit. Perayu telah memperoleh perintah interim ex parte menghalang responden pertama daripada mengeluarkan simpanannya dalam akaun KWSP sehingga permohonan inter parte selesai. Selepas perbicaraan permohonan itu, hakim bijaksana menolak yang sama, justeru rayuan ini. Perayu berhujah bahawa dokumen-dokumen sokongan untuk tuntutannya bagi nafkah interim terkandung dalam afidavitnya yang difailkan untuk menyokong permohonannya. Perayu juga

berhujah bahawa responden pertama yang mengeluarkan simpanannya dari akaun KWSPnya telah melanggar perintah mahkamah bertarikh 31 Mei 2013. Perayu selanjutnya berhujah bahawa meskipun telah diberikan notis untuk mengemukakan responden pertama telah gagal untuk mengemukakan butiran pegangan unit amanahnya. Walau bagaimanapun, perayu telah bersetuju bahawa rumah Semenyih telah dibeli oleh responden pertama sebelum perkahwinan. Sebagai jawapan, responden pertama berhujah bahawa permohonan perayu untuk menghalangnya daripada mengeluarkan simpanannya dari akaun KWSP dilarang di bawah s 51 Akta Kumpulan Wang Simpanan Pekerja 1991 ('Akta KWSP'). Berhubung unit amanah itu, responden pertama berhujah bahawa penyata yang dikemukakan oleh perayu berkaitan sebelum perkahwinan mereka. Responden pertama juga menegaskan bahawa rumah Semenyih itu diperoleh olehnya dan mendiang isterinya sebelum perkahwinan itu dan selanjutnya perayu tidak tinggal di rumah itu kebanyakan masanya dan tiada keterangan bahawa perayu telah menjalankan apa-apa penambahbaikan nyata pada rumah itu. Ia selanjutnya dihujahkan oleh respodnen pertama bahawa keperluan dan kehendak relatif pihak-pihak telah bertukar selepas perkahwinan itu runtuh pada 2011. Responden pertama juga berhujah bahawa tiada kelewatan melampau dalam memfailkan petisyen dan tiada sebab diberikan tentang kelewatan untuk memfailkan permohonan ini.

Diputuskan, menolak rayuan untuk permohonan-permohonan 3(a), 3(c), 4(a) dan 4(b); dan membenarkan rayuan untuk permohonan 5:

(1) Berdasarkan s 51 Akta KWSP yang memperuntukkan bahawa caruman dan deposit tidak boleh diberikan atau dilampirkan kepada permohonan perayu untuk menghalang responden pertama daripada mengeluarkan simpanannya dari akaun KWSPnya adalah tidak boleh dikekalkan (lihat perenggan 13).

(2) Penyata unit amanah yang dirujuka kepada mahkamah semasa perbicaraan adalah penyata bertarikh pada bulan Disember 2006 yang tidak mempunyai nilai probatif bagi menyokong hujah perayu. Setelah meneliti rekod rayuan, mahkamah bersetuju dengan hakim bijaksana bahawa tiada keterangan untuk menunjukkan yang responden pertama akan atau telah mengambil apa-apa langkah untuk melupuskan unit amanah itu (lihat perenggan 14).

(3) Rumah Semenyih telah dibeli sebelum responden pertama berkahwin isteri pempetisyen. Tiada keterangan untuk menyokong penegasan bahawa responden pertama telah atau akan melupuskan hartanah itu (lihat perenggan 15).

(4) Unit Kondominium Capsquare telah didaftarkan dalam nama bersama pihak-pihak dan juga pada masa ini dicagarkan kepada CIMB Bank. Oleh itu, adalah mustahil untuk responden pertama melupuskan

hartanah yang dipersoalkan tanpa persetujuan perayu (lihat perenggan 16).

(5) Walaupun responden pertama telah diserahkan notis untuk mengemukakan berkenaan pendapatan dan maklumat kewangan lain, responden pertama enggan untuk mengemukakan apa-apa dokumen termasuk penyata KWSPnya. Ketidakdedahan penting ini menunjukkan bahawa responden pertama sengaja, tidak jujur dan tiada suci hati. Oleh itu, mahkamah berhak membuat inferens bertentangan berhubung pendapatan dan maklumat kewangan responden lain berdasarkan kegagalannya untuk membuat penzahiran yang penuh dan benar. Mahkamah juga menyedari bahawa tiada penghujahan daripada responden pertama tentang sama ada perceraian itu telah menjejaskan kedudukan kewangannya, oleh itu, mahkamah memutuskan bahawa tiada kesan ke atas kedudukan kewangan responden pertama (lihat perenggan 32–33).

(6) Terdapat kegagalan di pihak hakim bijaksana untuk memahami secara kehakiman keterangan afidavit tentang keperluan dan kehendak perayu. Walau bagaimanapun, mahkamah berpendapat bahawa tuntutan untuk nafkah sementara RM15,000 oleh perayu tidak wajar dan munasabah secara keseluruhannya. Setelah mempertimbangkan kehendak dan keperluan pihak-pihak, mahkamah memutuskan bahawa jumlah bulanan RM8,000 adalah adil dan munasabah sebagai nafkah sementara sehingga selesai perbicaraan dan petisyen itu. Selepas perbicaraan petisyen, Mahkamah Tinggi adalah penimbang tara muktamad berhubung jumlah nafkah yang diawardkan kepada perayu, jika ada (lihat perenggan 22–23 & 34).]

Notes

For a case on application for interim maintenance, see 7(2) *Mallal's Digest* (5th Ed, 2015) para 4334.

For cases on appeal in general, see 5(1) *Mallal's Digest* (5th Ed, 2015) paras 171–1025.

Cases referred to

Chung Fui Chu v Foo Ho Cheng & Anor [2010] MLJU 423; [2010] 10 CLJ 93, HC (refd)

Diana Clarice Chan Ching Hwa v Tiong Chiong Hoo [2002] 2 MLJ 97; [2002] 1 CLJ 721, CA (folld)

Koay Cheng Eng v Linda Herawati Santoso [2008] 4 MLJ 863; [2008] 4 CLJ 105, CA (refd)

Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy [2004] 6 MLJ 240; [2004] 7 CLJ 175, HC (refd)

Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah [2011] 3 MLJ 123; [2010] 2 CLJ 736, HC (distd)

V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie [1999] 5 CLJ 474, HC (distd)

Legislation referred to

Employment Provident Fund Act 1991 s 51, 51(c)
Evidence Act 1950 s 114(g)
Law Reform (Marriage and Divorce) Act 1976 ss 77, 92, 102

Appeal from: Divorce Petition No 33–1026–05 of 2013 (High Court, Kuala Lumpur)

SR Sreedevi Naidu (SR Naidu & Co) for the appellant.
Harvindar Singh (Harvindar Singh & Co) for the respondents.

Vernon Ong JCA:

INTRODUCTION

[1] This appeal relates to a decision of the High Court dismissing the petitioner wife's application for the following orders:

(a) prayer 3(a) — the first respondent husband be restrained and or barred from withdrawing his savings from the employment provident fund ('EPF') until the disposal of the petition under s 102 of the Law Reform (Marriage and Divorce) Act 1976 ('the LRA 1976');

(b) prayer 3(c) — the first respondent husband be restrained and or barred from withdrawing his unit trust including those in unit trust public mutual;

(c) prayer 4(a) — the first respondent husband be barred from selling, mortgaging or charging the matrimonial home bearing postal address No 73, Jalan TTS 4, Taman Tasik Semenyih, 43500 Semenyih, Selangor ('the Semenyih house');

(d) prayer 4(b) — the first respondent husband be barred from selling, mortgaging or charging one unit condominium known as Parcel No N-23–2 (Northwing) type B1 level 23 held under master title Geran No 70570, Lot 323, Bandar Kuala Lumpur ('the Capsquare Condominium unit'); and

(e) prayer 5 — the first respondent husband pays to the petitioner wife interim maintenance in the sum of RM15,000 per month until the hearing of the petition.

[2] In this judgment, the parties shall be referred to as they were in the court below.

THE SALIENT FACTS

[3] The marriage of the petitioner wife and the first respondent husband was registered on 29 June 2010.

[4] During the marriage, the first respondent husband who was an employee of Petronas resided for the most part in Uzbekistan whilst the petitioner wife resided in Malaysia in her home at No 56, Jalan Prima Saujana 1/2H, Seksyen 1, Taman Prima Saujana, 4300 Kajang, Selangor ('the Kajang house'). The petitioner wife and the first respondent husband lived together for about four months at the Semenyih house.

[5] On 29 May 2013, the petitioner wife filed a petition for the dissolution of the marriage (in which adultery is alleged) citing her husband as the first respondent and one Geetha a/p Ganapathy as the second respondent.

[6] On 31 May 2013, the petitioner wife obtained an interim ex parte order restraining the first respondent husband from withdrawing his savings in the EPF account until disposal of the inter partes application.

[7] On 5 December 2013, the learned judge after hearing of the petitioner wife's application inter partes dismissed the same.

FINDINGS OF THE HIGH COURT

[8] In essence the learned judge's findings may be summarised as follows:

(a) prayer 3(a) was dismissed as it would offend against the provisions of s 51(c) of the Employment Provident Fund Act 1991 ('the EPF Act 1991') which provides that no amount standing to the credit of a member of the fund shall be assignable, transferable, liable to be attached, sequestered, levied upon for, or in respect of, any debt of claim whatsoever;

(b) prayer 3(c) was dismissed on the ground that there is no evidence to show that the first respondent husband is about to or had taken any steps to dissipate the unit trust;

(c) prayer 4(a) was dismissed on the ground that there is no evidence to show that the first respondent husband is about to or had taken any steps to dissipate the Semenyih House;

(d) prayer 4(b) was dismissed on the ground that the Capsquare Condominium unit is charged to CIMB Bank and since it is jointly owned by the petitioner wife and the first respondent husband, neither

of them can sell the property without the consent of the other. Further there is no evidence of the first respondent husband trying to dissipate the property; and

(e) prayer 5 was dismissed on the grounds that since the petitioner wife alleges adultery in the petition, the court had to decide first the issue of whether the alleged adulterous relationship between the first and second respondents led to the breakdown of the marriage before considering the question whether the petitioner wife is entitled to any maintenance; at any rate, the learned judge also found that the petitioner wife had not given any evidence of her means and needs to justify her claim for RM15,000 per month as interim maintenance (*Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah* [2011] 3 MLJ 123; [2010] 2 CLJ 736; *V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie* [1999] 5 CLJ 474).

SUBMISSION OF PARTIES

[9] The petitioner wife, an advocate and solicitor, appeared in person and argued her appeal without legal counsel. The petitioner wife contended that the documents in support of her claim for interim maintenance showing her means and needs, monthly expenses and computations are contained in her affidavits filed in support of her application. She added that the two cases relied upon by the learned judge and the first respondent are distinguishable on the facts. In support of her claim for interim maintenance, she cited *Diana Clarice Chan Ching Hwa v Tiong Chiong Hoo* [2002] 2 MLJ 97; [2002] 1 CLJ 721 (CA) and *Chung Fui Chu v Foo Ho Cheng & Anor* [2010] MLJU 423; [2010] 10 CLJ 93.

[10] The petitioner wife also submitted that the first respondent withdrew his savings from his EPF account in breach of a court order dated 31 May 2013 which restrained him from doing so. She conceded that the Semenyih house was purchased by the first respondent before the marriage. As for the unit trust, she submitted that notwithstanding giving the notice to produce the first respondent has failed to produce the particulars of his unit trust holdings.

[11] In reply, learned counsel for the first respondent argued that the order sought by the petitioner wife to restrain or bar the first respondent from withdrawing his savings from his EPF account is prohibited under s 51 of the EPF Act 1991. As for the unit trusts, it was submitted that the statement produced by the petitioner wife relates to 2006 which is before the marriage. The Semenyih house was acquired by the first respondent and his late wife before the marriage. The petitioner wife did not stay in the Semenyih house most of the time. There is no evidence to show that the petitioner wife carried out any substantial improvement of the property.

[12] Learned counsel also argued that the first respondent gave the petitioner wife RM50,000 to open her new firm. After the marriage broke down in 2011, the relative needs and means of the parties have changed. The first respondent is retired while the petitioner wife runs her own firm. Learned counsel also argued that there was inordinate delay in the filing of the petition and no reason was given as to the delay for the filing of this application.

DECISION

Prayer 3(a) — EPF monies

[13] In so far as prayer 3(a) is concerned, we agree with the decision of the learned judge that the petitioner wife's prayer to restrain the first respondent from withdrawing his savings from his EPF account is unsustainable in the light of s 51 of the EPF Act 1991 which provides that contributions and deposits are not to be assigned or attached.

Prayer 3(c) — Unit trusts

[14] As for the unit trusts under prayer 3(c), the unit trust statement referred to us at the hearing is a statement is dated far back in December 2006 as to have no probative weight in support of the petitioner wife's contention. Further, on perusing the appeal record we agree with the learned judge that there is no evidence to show that the first respondent husband is about to or had taken any steps to dissipate the unit trust.

Prayer 4(a) — Semenyih house

[15] The Semenyih house, the subject of prayer 4(a), was purchased before the first respondent married the petitioner wife. After considering the submission of parties, we do not think that there is any misdirection on the law or on the facts by the learned judge. We are constrained to agree that there is no evidence to support the assertion that the first respondent had or was about to dissipate the property.

Prayer 4(b) — Capsquare Condominium unit

[16] In so far as the Capsquare Condominium unit under prayer 4(c) is concerned, we are not persuaded that the learned judge erred in arriving at her finding. The property in question is registered in the joint names of the parties hereto and it is also presently charged to CIMB Bank. As such, it is impossible for the first respondent to dissipate the property in question without the consent of the petitioner wife.

Prayer 5 — Interim maintenance

[17] We now turn to the last order sought under prayer 5 — the claim for interim maintenance.

[18] In dismissing the claim for interim maintenance, the learned judge referred to two cases. In *Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah* [2011] 3 MLJ 123; [2010] 2 CLJ 736, no petition was filed; the application for maintenance was made by originating summons and the alleged adulterer was the wife. In *V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie* [1999] 5 CLJ 474, the marriage was not consummated, the parties never lived together as husband and wife, the wife was never given any maintenance by her husband. Further, the application for interim maintenance was made seven years after the husband had filed the divorce petition. We agree with the submission of the petitioner wife that the aforesaid cases are distinguishable on the facts and therefore inapplicable to the present case.

[19] In *Diana Clarice Chan Ching Hwa v Tiong Chiong Hoo* , the Court of Appeal held that the trial judge erred when he ruled that he had no jurisdiction to entertain the wife's application for maintenance during the course of matrimonial proceedings.

[20] In *Chung Fui Chu v Foo Ho Cheng & Anor* , the petitioner was a housewife and had not been working for 12 years. She stayed at home to take care of the two children of ages 11 and ten years. The High Court judge held that she cannot be expected to quickly go out and look for a job just because the marriage broke down and the respondent was reluctant to pay her an adequate maintenance.

[21] We associate ourselves with the decision of the Court of Appeal in *Diana Clarice Chan Ching Hwa v Tiong Chiong Hoo* that the High Court has the jurisdiction to grant interim maintenance during the course of matrimonial proceedings. We do not think that it is necessary for the court to decide the issue of whether the alleged adulterous relationship between the first and second respondents led to the breakdown of the marriage before considering the question whether the petitioner wife is entitled to any interim maintenance. What is in issue is whether in all the circumstances the petitioner wife should be left high and dry without any interim maintenance pending the matrimonial proceedings. We think not. As such, the court shall now consider the means and needs of the parties based on the affidavit evidence.

[22] As adverted to in the preceding paragraphs, the petitioner wife's needs and means have been amply made out on the affidavit evidence. We are

constrained to hold that there was a failure on the part of the learned judge to judicially appreciate the evidence and that her decision dismissing prayer 5 should be set aside.

[23] Be that as it may, we do not think that in all the circumstances the petitioner wife's claim for interim maintenance of RM15,000 per month is entirely justified or reasonable. As a starting point, it is useful to reiterate that the term maintenance in ss 77 and 92 of the LRA 1976 should be construed widely as it signifies any form of material provision that will enable the wife and children, if any, to be placed in a position to enjoy the same standard of living as they did during the subsistence of the marriage (see *Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy* [2004] 6 MLJ 240; [2004] 7 CLJ 175).

[24] In deciding the amount of maintenance to be awarded to the petitioner wife, the court must take into account the means and needs of the parties. In assessing the means and needs of the parties, the court has always had regard to the following factors:

(a) the duration of the marriage;

(b) whether there are any children of the marriage, the age of the parties;

(c) whether the husband had financially supported the wife during the subsistence of the marriage;

(d) the parties earning capabilities; and

(e) whether the divorce would have affected the husband's position financially

(see *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 CLJ 105 (CA) at pp 116 and 118).

[25] In this instance, the parties have been married on 29 June 2010; as the date of the hearing of the appeal, they would have been married for close to five years. There are no children of the marriage. During the subsistence of the marriage, the first respondent husband financially supported the petitioner wife. According to the petitioner wife, the first respondent paid her maintenance as follows:

21 July 2011 — RM50,000 (payment in arrears for July 2010 – July 2011)

6 August 2011 — RM2,000

29 August 2011 — RM5,000

30 September 2011 — RM3,000

24 October 2011 — RM3,500

2 December 2011 — RM3,400 (for November month)

In addition, the petitioner wife's medical expenses at a private hospital were provided by the first respondent. In support of her contention, we were referred to her bank statements evidencing said payments (*RR* 3 at pp 427–428).

[26] During the subsistence of the marriage, the petitioner wife was practising as an advocate and solicitor while the first respondent was an engineer with Petronas. However, the petitioner wife stopped working for nine years after the marriage.

[27] The petitioner wife referred to her payslip dated 31 January 2011 in *rekod rayuan* 3 at p 593. She stopped working and became a housewife for nine years after the marriage because the first respondent asked her to stop working and promised to take care of her and her financial needs. The first respondent gave her maintenance until their separation in December 2011 as indicated by her bank statement dated 30 September 2011 (*RR* 3 at p 427–429). She also set out her fixed monthly expenses of about RM4,056.52 a month and exhibited the relevant supporting documents (*RR* 2 p 360 para 65; *RR* 3 at pp 430–437).

[28] The petitioner wife also said she was in financial straits as she did not get any maintenance after December 2011, so much so that in February 2012 she had to withdraw her EPF savings in account 2 to pay the housing loan leaving a balance of RM906.60 (*RR* 2 at p 279, paras 41 and 42; *RR* 3 at pp 411, 431 and 505–596).

[29] After the separation, the petitioner wife argued that she was forced to look for work but was not successful. Eventually, she obtained a loan of RM8,000 from her brother to start her legal practice (*RR* 3 at p 429). Her expenses for her firm for January and February 2012 amounted to RM6,251 (*RR* 3 at pp 415–416). She operated her legal practice from home as she was unable to cover the rental costs. Operating from home had its drawbacks including the difficulty of attracting clients. For the financial year ended 2012, the petitioner wife's legal practice showed a net profit (after deduction of operating expenses) of RM10,244 only (*RR* 3 at p 413). For financial year end 2013, the net profit was RM13,051 only. These facts are not disputed by the first respondent. In short, the petitioner wife's assertion is that her earnings are meagre and unsustainable without any maintenance from the first respondent. She said that her life is like: 'kais pagi makan pagi dan kais petang makan petang'. As such, it is impossible for her to enjoy the same standard of living of

an upper middle class as she did during the marriage.

[30] The fact that the first respondent was the Country Chairman for Petronas cari gali Uzbektistan with a monthly income of RM80,000 since 2010 is not disputed. Between 2005–2013, the first respondent's earnings including bonuses and EPF contributions totalled RM12,809,048.45.

[31] According to the first respondent's affidavit dated 11 September 2013, he retired from Petronas on 21 June 2013 at the age of 55 and is not working (*RR* 2 at p 379, para 22). However, he did not disclose the fact that he had been working as a chief marketing officer in a company known as Oil and Gas Gryphon Energy since August 2013. The first respondent can afford to buy health insurance where the annual premiums are RM36,075 and RM9,500 respectively (*RR* 3 at pp 580–581). The first respondent is also a member of the Royal Port Dickson Yacht Club. In addition, the first respondent and the second respondent have gone to Samarkand and Paris together.

[32] Even though the first respondent was served with a notice to produce relating to his income and other financial information, the first respondent has refused to produce any documents. He has even refused to produce his EPF statement; the said non-disclosures are material non disclosures relating to the first respondent's financial situation. The material non-disclosure indicates that the first respondent is deliberate, dishonest and lacking bona fides. Meanwhile, it is not seriously disputed that the first respondent is also supporting an illegitimate child, a mistress, his mother and a lavish lifestyle of up to RM10,986 a month. In all the circumstances, we think that the court is entitled to draw an adverse inference with regard to the first respondent's income and other financial information on account of his failure to make full and frank disclosure (s 114(g) of the Evidence Act 1950).

[33] We also note that there was no submission from the first respondent on whether the divorce has affected the husband's position financially. Accordingly, we hold that that there is no effect on the first respondent's financial position.

[34] Having carefully considered all the aforesaid circumstances and the means and needs of the petitioner wife and the first respondent husband, we are of the view that a monthly sum of RM8,000 is a fair and reasonable sum as interim maintenance pending the hearing and disposal of the petition. At any rate, after the hearing of the petition the High Court will be the final arbiter of the amount of the maintenance to be awarded to the petitioner wife, if any.

[35] In conclusion, the appeal is allowed in part. The decision of the High Court dismissing prayers 3(a), 3(c), 4(a) and 4(b) is affirmed. The decision of

the High Court dismissing prayer 5 is set aside. We order that the first respondent pay interim maintenance of RM8,000 per month to the petitioner wife with effect from the date of our decision; the first interim maintenance to be paid within seven days into the petitioner wife's bank account and thereafter on monthly intervals by the seventh day of each calendar month. We also awarded costs of RM15,000 here and below to the petitioner wife.

Appeal dismissed for prayers 3(a), 3(c), 4(a) and 4(b); appeal allowed for prayer 5.

Reported by Dzulqarnain Ab Fatar